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IN THE

Supreme Court of the United States

October Term, 1971

No. 71 - 183

THE AGUA CALIENTE BAND OF MISSION INDIANS, by and through its TRIBAL COUNCIL, and DORA JOYCE PRIETO, PRISCILLA GONZALES, GLORIA GILLETTE, PATRICK PATENCIO, and LAWRENCE PIERCE, Allottees, Individually and in Class Action, on behalf of ALL ALLOTTEES of Allotted Land on the AGUA CALIENTE BAND OF MISSION INDIANS RESERVATION,

Plaintiffs,

vs.

THE COUNTY OF RIVERSIDE, a political subdivision of the STATE OF CALIFORNIA,

Defendant.

Amici Curiae Brief on Behalf of The Fort Mojave Indian Tribe, of Arizona, California and Nevada; The Southern Ute Tribe, of Colorado; The Confederated Tribes of the Colville Reservation of, Washington; The Quechan Indian Tribe of the Fort Yuma Reservation, of Arizona and California; The Makah Indian Tribe of the Makah Indian Reservation, of Washington; The Cabazon Band of Mission Indians, of California; The Lummi Indian Tribe of the Lummi Reservation, of Washington; The Yavapai Prescott Community Association, of Arizona.

INDIAN AMICI CURIAE,
c/o 110 Pine Avenue, Suite 406,
Long Beach, Calif. 90802,
(213) 435-8303,

Parker & Son, Inc., Law Printers, Los Angeles. Phone 724-6622

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Counsel for all parties have consented, in writing, to the filing of Amicus Curiae Briefs in the above entitled case on behalf of the following named American Indian Tribes in support of the Agua Caliente Indians Petition for Certiorari, to wit:

The Fort Mojave Indian Tribe, of Arizona, California, and Nevada;

The Southern Ute Tribe, of Colorado;

The Confederated Tribes of the Colville Reservation, of Washington;

The Quechan Indian Tribe of the Fort Yuma Reservation, of Arizona and California;

The Makah Indian Tribe of the Makah Indian Reservation, of Washington;

The Cabazon Band of Mission Indians, of California;

The Lummi Indian Tribe of the Lummi Reservation, of Washington;

The Yavapai Prescott Community Association, of Arizona.

Interest of Amici Curiae.

It is the considered opinion and belief of all Amici named herein that the case at bar is of such importance and significance as to be critical in its impact upon the future economy of all American Indian Tribes. All are tribes duly recognized by the Secretary of Interior. All possess lands held in trust by the United States of America as their Trustee, for the sole use and benefit of the Indian beneficiaries. The current economic status of most Indian Tribes is deplorable. Indeed, according to statistics compiled by the Bureau of Indian Affairs, the average median family income for all Arizona reservations, the State with the greatest number of Indians, amounts to only $1,357.00 annually; and approximately forty-nine (49%) percent of the Indian work force within the State is unemployed.

For people so immersed in poverty, a Possessory Interest Tax upon Lessees of their land, which obviously is ultimately passed on to the Indian, must have a direct

impact, and costly and adverse consequences. Both the Congress and the Federal Courts have historically and consistently attempted to protect the American Indians from illegal and unwarranted encroachment by the States and their political subdivisions, as the Indians pursue their way of life and attempt to precipitate economic development of their trust lands to their highest and best economic use. More specifically, the object of this consolidated Brief by the Amici named herein is to demonstrate that the Possessory Interest Tax imposed by the County of Riverside constitutes:

(1) A frustration of the trust responsibility of the United States;

(2) An illegal interference with the taxing power of an Indian Tribe.

Questions Presented.

The two fundamental questions presented by the case at bar are:

(1) May the States and their political Subdivisions effectively frustrate the trust responsibility of the United States to provide Indian beneficiaries with a fee simple title, free and clear of all encumbrances upon the expiration of the trust period, through the imposition of a Possessory Interest Tax upon Lessees of Indian Trust lands?

(2) May the States and their political Subdivisions illegally interfere with the taxing power of an Indian Tribe?

ARGUMENT.

I.

The United States Has a Duty to Convey a Fee Simple Title Free of All Charge or Encumbrance Whatsoever Upon the Expiration of the Trust Period.

A. If the County of Riverside Is Allowed to Impose a Possessory Interest Tax, the United States Will Not Be Able to Perform.

The United States Supreme Court, in the celebrated case of *Squire v. Capoeman,* 351 U.S. 1, 1100 Lawyers Edition 883 (1956), made an extensive analysis of the nature of the Indian trust involved in the case at bar. In so doing, they noted that the Congress of the United States, in providing for said Indian trust, had cautiously undertaken to protect it from any diminution in value during the trust period by expressly providing that upon expiration thereof a fee title shall be issued, free and clear of all charge or encumbrance whatsoever. In making a comprehensive comment upon why no tax should be permitted to stand, which would impair the Government's promise to transfer the fee "free of all charge or encumbrance whatsoever", the Supreme Court said:

> "The courts below held that imposition of the tax here in question is inconsistent with the Government's promise to transfer the fee 'free of all charge or encumbrance whatsoever.' Although this statutory provision is not expressly couched in terms of nontaxability, this Court has said that
>
> > 'Doubtful expressions are to be resolved in favor of the weak and defenseless people who are the wards of the nation, dependent upon its protection and good faith. Hence, in the words

> of Chief Justice Marshall: "The language used in treaties with the Indians should never be construed to their prejudice. If words be made us of, which are susceptible of a more extended meaning than their plain import, as connected with the tenor of the treaty, they should be considered as used only in the latter sense."'
>
> *Worcester v. State of Georgia, 6 Pet. 515, 582; 8 L. Ed. 483.*"
>
> *Carpenter v. Shaw*, 280 U.S. 363, 367, 50 S. Ct. 121, 122, 75 L. Ed. 478.

Thus, the general words "charge or incumbrance" might well be sufficient to include taxation. But Congress, in an amendment to the General Allotment Act, gave additional force to respondent's position. Section 6 of that Act was amended to include a proviso—

> 'That the Secretary of the Interior, may in his discretion, and he is authorized, whenever he shall be satisfied that any Indian allottee is competent and capable of managing his or her affairs at any time to cause to be issued to such allottee a patent in fee simple, and the reafter all restrictions as to sale, incumbrance, or taxation of said land shall be removed and said land shall not be liable to the satisfaction of any debt contracted prior to the issuing of such patent. * * *'

"The Government argues that this amendment was directed solely at permitting state and local taxation after a transfer in fee, but there is no indication in the legislative history of the amendment that it was to be so limited. The fact that this

amendment antedated the federal income tax by 10 years also seems irrelevant. The literal language of the proviso evinces a congressional intent to subject an Indian allotment to all taxes only after a patent in fee is issued to the allottee. This, in turn, implies that, until such time as the patent is issued, the allotment shall be free from all taxes, both those in being and those which might in the future be enacted."

"The wisdom of the congressional exemption from tax embodied in Section 6 of the General Allotment Act is manifested by the facts of the instant case. Respondent's timber constitutes the major value of his allotted land. The Government determines the conditions under which the cutting is made. Once logged off, the land is of little value. The land no longer serves the purpose for which it was by treaty set aside to his ancestors, and for which it was allotted to him. It can no longer be adequate to his needs and serve the purpose of bringing him finally to a state of competency and independence. Unless the proceeds of the timber sale are preserved for respondent, he cannot go forward when declared competent with the necessary chance of economic survival in competition with others. This chance is guaranteed by the tax exemption afforded by the General Allotment Act, and the solemn undertaking in the patent. It is unreasonable to infer that, in enacting the income tax law, Congress intended to limit or undermine the Government's undertaking. To tax respondent under these circumstances would, in the words of the court below, be 'at least, a sorry breach of faith with these Indians.' "

Certainly, if the Supreme Court of the United States has seen fit to restrict the Federal Government from imposing any kind of tax whatsoever respecting Indian trust land before the expiration of the trust period, it would logically follow that the States and their political subdivisions must also operate under the same prohibition. In other words, if the Federal Government has a duty to convey a fee simple title, free of all charge or encumbrance upon the expiration of the trust period, which precludes the imposition of "all taxes" during the trust period, then the County of Riverside must also abstain because any action to the contrary would preclude total performance by the United States as Trustee for the Indians. Furthermore, since Riverside County is prohibited from imposing any direct taxation upon said Indian trust it must also be prevented from imposing a Possessory Interest Tax, which is nothing more than doing indirectly that which they are prohibited from doing directly.

B. State Supreme Courts Have Recognized the Trust Duty of the United States to Control Indian Trust Lands.

While the United States Supreme Court has never directly ruled that a state may not impose a possessory interest tax upon lessees of Indian land held in trust by the Federal Government, State Supreme Courts have reached results which sustain the position asserted by Petitioner herein.

In *Foster v. Board of County Commissioners*, 7 Minn. 140 (1882), the County attempted to place a tax upon the personal property of an Indian trader living within the Winnebago Reservation. In finding against the County, the court emphasized that "Congress has the sole and exclusive jurisdiction over the

subject of intercourse with the Indian Tribes". Relying quite heavily upon *McCullouch v. Maryland*, 4 Wheat. 415 (1819), the Court further decided that the power to tax the plaintiff was the power to economic destruction and that such power was "incompatible with the exclusive jurisdiction over the regulation of this commerce which we have shown to exist in the Congress of the United States."

The Supreme Court of Colorado in *Whyte v. District Court*, 346 P. 2d 1012 (1959), reached the same conclusion when it stated the law succinctly:

> "Under the Constitution of the United States the jurisdiction of the Federal government over all Indian affairs is plenary and subject to no diminution by the States in the absence of specific congressional grant of authority to them to act. *United States v. Kagama*, 118 U.S. 375, 6 S.Ct. 1109, 30 L.Ed. 228; *United States v. McGowan*, 302 U.S. 535, 58 S.Ct. 286, 82 L.Ed. 410; *Perrin v. United States*, 232 U.S. 478, 34 S.Ct. 387, 58 L.Ed. 691.
>
> As a corollary to Federal sovereignty it is clear that state laws have no force within the territory of an Indian tribe in matters affecting Indians. *Patterson v. Council of Seneca Nation*, 245 N.Y. 433; 157 N.E. 734; *Blanset v. Garden*, 256 U.S. 319, 41 S.Ct. 519, 65 L.Ed. 950; *Dole v. Irish*, 2 Barb. (N.Y.) 639; *Oklahoma Land Co. v. Thomas*, 34 Ok. 681, 127 P. 8; *Donnelly v. United States*, 228 U.S. 243, 33 S.Ct. 449, 57 L.Ed. 820; *Williams v. United States*, 327 U.S. 711, 66 S.Ct. 778, 90 L.Ed. 902. As stated by Cohen in his Federal Indian Law at page 120, 'It

> is well settled that the State has no power over the conduct of Indians within the Indian country, whether or not the conduct is of special concern to the federal government.'"

It was contended in *Whyte* that Colorado had jurisdiction over Indian affairs because the State did not in its constitution disclaim jurisdiction over Indian land. The Court rejected this contention, holding:

> . . . it is entirely clear that this failure to do so cannot conceivably result in Colorado jurisdiction over Indian Affairs. (The court then discussed Donnelly v. United States). . . . The test is not whether a State has disclaimed such a jurisdiction but whether Congress has authorized such a jurisdiction within the State. . . . (The Court then discussed the impact of 18 U.S.C.A. Section 1162 authorizing States to qualify for jurisdiction over certain aspects of Indian affairs by amending their Constitutions or laws.)

It should thus be plain, as Cohen, in his *Handbook*,* states at page 116:

> "That State laws have no force within the territory of an Indian tribe in matters affecting Indians is a general proposition that has not been successfully challenged, at least in the United States Supreme Court, since that Court decided (in 1832) in Worcester v. Georgia, 6 Pet. 515, 8 L.Ed. 483) that the State of Georgia had no right to imprison a white man residing on an Indian reservation with the consent of tribal and federal authorities, who refused to conform to State laws governing Indian affairs."

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*Felix S. Cohen's *Handbook of Federal Indian Law* published by the United States under the direction of the Office of the Solicitor of the Department of Interior (1958).

The more recent case of *Snohomish County v. Seattle Disposal Company,* 425 P. 2d 22 (1967), involved legal issues similar to those in the instant case. There, the county was attempting to enjoin a non-Indian plaintiff from disposing of garbage without a conditional use permit on land leased from the Tulalip Indian Tribe and located within the Snohomish County. The Washington Supreme Court observed the limited applicability of Public Law 280 (28 U.S.C. 1860) and then noted that the imposition of any zoning regulations upon Indian trust lands was contrary to both the words and intent of Public Law 280 and thus contrary to the concept of the Federal Government's exclusive jurisdiction. Furthermore, the court was not disturbed by the fact that the County was seeking to control the lessee's use of the land and not the Indian's use; in reaching the substance of the County's scheme, the court declared:

> "Limitation on the use to which a lessee from the Tulalip Tribes can put Indian lands is limiting the Indian use. *The county cannot indirectly accomplish prohibited interference with property that it could not accomplish directly.*" (Emphasis ours) *supra* at 26.

Thereafter, in 1968, in a case closely analogous to the one at bar, the Washington Supreme Court declared that a State tax could not be imposed upon the interests of a non-Indian spouse in the property of a reservation Indian land owner, or upon the interests of a Lessee in improvements constructed upon trust land.

> *Makah Indian Tribe v. Clallam County,* 73 Wash. 2d 677; 440 P. 2d 442.

The property under consideration in the *Makah* case, *supra,* was utilized in a commercial enterprise

which did business with non-Indians. The court therein stated:

> "The reasons for such a ruling lie almost exclusively in the discernible Federal policy of encouraging Indians to become economically self-sufficient on their reservation . . . that the Makahs, while receiving most of the benefits of tax payers and citizenship, escape some of the correlative responsibilities of citizenship, is a problem for the Congress and the President to solve."

II.

The Possessory Interest Tax in the Case at Bar Constitutes an Illegal Interference With the Tribe's Taxing Power.

It has long been recognized that one of the powers essential to the maintenance of any government is the power to levy taxes. In fact, chief among the powers of severeignty recognized as pertaining to Indian tribes has been the power of taxation. That particular power is an attribute of tribal quasi-sovereignty which continues unless withdrawn by an Act of Congress or limited by treaty.

> *Iron Crow v. Oglala Sioux Tribe of Pine Ridge Reservation,* 231 F. 2d 89, 96 (1956).

A landmark case in this field is the case of *Buster v. Wright,* 135 Fed. 947 (1905), appeal dismissed 203 U.S. 599. Under the facts of that case, the Creek Nation, one of the five civilized tribes, imposed a tax for a license fee upon all persons, not citizens of the Creek Nation, who traded within the borders of that

Nation. The Interior Department specifically requested the advice of the Attorney General as to the legality of such a tax, and was advised that the tax was legal and that the Interior Department was under an implied duty to assist in its enforcement. Immediately thereafter the Interior Department promulgated appropriate regulations to aid the Tribe in making collection of the license fees. The plaintiffs in the case of *Buster v. Wright, supra,* were traders doing business on townsites within the geographical boundaries of the Creek Nation, who sought to restrain officers of the Creek Nation and representatives of the Interior Department from closing down their business and evicting them for non-payment of taxes. On a Demurrer, the plaintiffs' Bill was dismissed by the trial court. The decision of the trial court was then affirmed by the Court of Appeals of the Indian Territory, again by the Circuit Court of Appeals for the Eighth Circuit, and finally by the United States Supreme Court. The erudition of Judge Sanborn, Circuit Court of Appeals, illuminates the entire subject:

> "* * * It may not be unwise, before entering upon the discussion of this proposition, to place clearly before our minds the character of the Creek Nation and the nature of the power which it is attempting to exercise.
>
> The authority of the Creek Nation to prescribe the terms upon which noncitizens may transact business within its borders did not have its origin in act of Congress, treaty, or agreement of the United States. It was one of the inherent and

essential attributes of its original sovereignty. It was a natural right of that people, indispensable to its autonomy as a distinct tribe or nation, and it must remain an attribute of its government until by the agreement of the nation itself or by the superior power of the republic it is taken from it. Neither the authority nor the power of the United States to license its citizens to trade in the Creek Nation, with or without the consent of that tribe, is in issue in this case, because the complainants have no such licenses. The plenary power and lawful authority of the government of the United States by license, by treaty, or by act of Congress to take from the Creek Nation every vestige of its original or acquired governmental authority and power may be admitted, and for the purposes of this decision are here conceded. The fact remains nevertheless that every original attribute of the government of the Creek Nation still exists intact which has not been destroyed or limited by act of Congress or by the contracts of the Creek tribe itself.

Originally an independent tribe, the superior power of the republic early reduced this Indian people to a 'domestic, dependent nation' (Cherokee Nation v. State of Georgia, 5 Pet. 1-20, 8 L. Ed. 25), yet left it a distinct political entity, clothed with ample authority to govern its inhabitants and to manage its domestic affairs through officers of its own selection, who under a Constitution modeled after that of the United States, exercised legislative, executive and judicial functions within its territorial jurisdicton for more than half a century. The governmental jurisdiction of this nation was neither conditioned nor limited by the

original title by occupancy to the lands within its territory. * * *

* * * Founded in its original national sovereignty, and secured by these treaties, the governmental authority of the Creek Nation, subject always to the superior power of the republic, remained practically unimpaired until the year 1889. Between the years 1888 and 1901 the United States by various acts of Congress deprived this tribe of all its judicial power, and curtailed its remaining authority until its powers of government have become the mere shadows of their former selves. Nevertheless its authority to fix the terms upon which noncitizens might conduct business within its territorial boundaries guarantied by the treaties of 1832, 1856, and 1866, and sustained by repeated decisions of the courts and opinions of the Attorneys General of the United States, remained undisturbed.

* * * It is said that the sale of these lots and the incorporation of cities and towns upon the sites in which the lots are found authorized by act of Congress to collect taxes for municipal purposes segregated the town sites and the lots sold from the territory of the Creek Nation, and deprived it of governmental jurisdiction over this property and over its occupants. But the jurisdiction to govern the inhabitants of a country is not conditioned or limited by the title to the land which they occupy in it, or by the existence of municipalities therein endowed with power to collect taxes for city purposes, and to enact and enforce municipal ordinances. Neither the United States, nor a state, nor any other sovereignty loses the power to gov-

> ern the people with its borders by the existence of towns and cities therein endowed with the usual powers of municipalities, nor by the ownership nor occupancy of the land within its territorial jurisdiction by citizens or foreigners." (at pp. 949-952).

"A similar opinion was rendered by the Attorney General (23 Ops. Atty. Gen. 528) with respect to the right of the Cherokee Nation to impose an export tax on hay grown within the limits of the reservation. The opinion of the Attorney General suggested that tribal authority to impose such a tax would remain 'even if the shipper was the absolute owner of the land on which the hay was raised.' This suggestion was referred to and approved by the United States Supreme Court in *Morris v. Hitchcock,* (194 U.S. 384, 392)."

"In the latter case, the Court of Appeals of the District of Columbia, considering the validity of a tax or fee imposed by the Chickasaw Nation upon the owners of all cattle grazed within the Chickasaw territory, analyzed the status and powers of the Chickasaw Nation in these terms:

> 'A government of the kind necessarily has the power to maintain its existence and effectiveness through the exercise of the usual power of taxation upon all property within its limits, save as may be restricted by its organic law. Any restriction in the organic law in respect of this ordinary power of taxation, and the property subject thereto, ought to appear by express provision or necessary implication. *Board Trustees v. Indiana,* 14

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How, 268, 272; *Talbott v. Silver Bow Co.*, 139 U.S. 438, 448. Where the restriction upon this exercise of power by a recognized government, is claimed under the stipulation of a treaty with another, whether the former be dependent upon the latter or not, it would seem that its existence ought to appear beyond a reasonable doubt. We discover no such restriction in the clause of Article Z of the Treaty of 1855, which excepts white persons from the recognition therein of the unrestricted right of self-government by the Chickasaw Nation, and its full jurisdiction over persons and property within its limits. The conditions of that exception may be fully met without going to the extreme of saying that it was also intended to prevent the exercise of the power to consent to the entry of noncitizens, or the taxation of property actually within the limits of that government and enjoying its benefits,' (*Morris v. Hitchcock*, 21 App. D.C. 565, 593).

"In the case of *Maxey v. Wright* (3 Ind. T. 243, 54 S. W. 807, aff'd. 105 Fed. 1003), the right of an Indian tribe to levy a tax upon a non-member of the tribe residing on its reservation was held to be an essential attribute of tribal sovereignty, which might be curtailed by express language of a treaty or statute, but otherwise remained intact. In that case the court declared:

'* * * in the absence of express contradictory provisions by treaty, or by statute of the United States, the Nation (and not a citizen) is to declare who shall come within the boundaries of its oc-

cupancy, and under what conditions.' (at page 36)."

"See, to the same effect, 17 Ops. Atty. Gen. 134; 18 Ops. Atty. Gen. 34."

The imposition of a Possessory Interest Tax by the County of Riverside upon Lessees of Agua Caliente trust lands is double taxation. In viewing this same type of problem on repeated occasions in interstate commerce cases, this Honorable Court has invalidated actual or potential double taxation.

Railway Expenses Agency, Inc. v. Virginia, 347 U.S. 359, 367-8 (1954);

Freeman v. Hewit, 329 U.S. 249, 256-7 (1946);

J. D. Adams Manufacturing Co. v. Storen, 304 U.S. 307, 311-12 (1938).

The Possessory Interest Tax, as applied to Lessees of Agua Caliente Indian trust lands, should not be allowed to stand since it is double taxation in classic form. In competition with the right of tribes to impose taxes within their own reservations, the state tax must fall.

Conclusion.

It becomes undeniable that:

(1) The Possessory Interest Tax by the County of Riverside in actuality becomes a tax upon the Indian, which, if allowed to stand, will frustrate performance by the United States of America as trustee.

(2) Indian Tribes have attributes of sovereignty which include the power to tax without interference by any other sovereign, thereby permitting Indian Tribes

to exercise their inherent power of local self-government. Accordingly, the hereinafter named Amici Curiae strongly urge this Honorable Court to grant the Agua Caliente Indians' Petition for Certiorari.

Dated: August 9, 1971.

Respectfully submitted,

THE FORT MOJAVE INDIAN TRIBE, OF ARIZONA, CALIFORNIA AND NEVADA,

THE SOUTHERN UTE TRIBE, OF COLORADO,

THE CONFEDERATED TRIBES OF THE COLVILLE RESERVATION, OF WASHINGTON,

THE QUECHAN INDIAN TRIBE OF THE FORT YUMA RESERVATION, OF ARIZONA AND CALIFORNIA,

THE MAKAH INDIAN TRIBE OF THE MAKAH INDIAN RESERVATION, OF WASHINGTON,

THE CABAZON BAND OF MISSION INDIANS, OF CALIFORNIA,

THE LUMMI INDIAN TRIBE OF THE LUMMI RESERVATION, OF WASHINGTON,

THE YAVAPAI PRESCOTT COMMUNITY ASSOCIATION, OF ARIZONA.

AMICUS CURIAE BRIEF

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Plaintiffs,

vs.

THE COUNTY OF RIVERSIDE, a political Subdivision of the STATE OF CALIFORNIA,

Defendant.

BRIEF OF JAMES A. HALEY, AS AMICUS CURIAE.

HONORABLE JAMES A. HALEY,
Congress of the United States,
House of Representatives,
Washington, D. C. 20515.

JAMES A. HALEY,
Member, United States Congress, Chairman of Indian Subcommittee, and Interior and Insular Affairs.
As Amicus Curiae.

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IN THE

Supreme Court of the United States

Oct. Term 1971
No. .....

THE AGUA CALIENTE BAND OF MISSION INDIANS, by and through its TRIBAL COUNCIL, and DORA JOYCE PRIETO, PRICILLA GONZALES, GLORIA GILLETTE, PATRICK PATENCIO, and LAWRENCE PIERCE, Allottees, Individually and in Class Action, on behalf of ALL ALLOTTEES of Allotted Land on the AGUA CALIENTE BAND OF MISSION INDIANS RESERVATION,

Plaintiffs,

vs.

THE COUNTY OF RIVERSIDE, a political Subdivision of the STATE OF CALIFORNIA,

Defendant.

BRIEF OF JAMES A. HALEY, AS AMICUS CURIAE.

Pursuant to Rule 42(2) and the written consent of the parties hereto, The Honorable James A. Haley, Member of Congress, does hereby file this brief as Amicus Curiae.

Interest of Amicus Curiae.

The Honorable James A. Haley, Member of the United States Congress, representing the Seventh District of the State of Florida, became a member of the Indian Subcommittee of the Interior and Insular Affairs Committee in January of 1953, and has been Chairman of said Committee since 1955. In that capacity, and operating under the plenary powers vested in the

Congress by the Constitution of the United States, he has become thoroughly conversant with the critical problems of the American Indian people in their struggle for economic development. As a consequence he has participated and has actively fought for constructive legislation which would enable the United States to carry out its trust duties to these Indians. In so doing, he has also encountered many adverse interests who have carefully contrived to erode away the legislation intended to benefit Indians. Because of the ever-increasing desire by the States and their political subdivisions for new revenue, he has detected their role as an adversary who actively strives to terminate the Indian trust status at the earliest possible date. His interest in the instant proceeding, therefore, is to let the Court know that the economic impact of the imposition of a possessory interest tax on Indian Lessees in Riverside County is not confined to the Agua Caliente Indians, but that the impact thereof upon all Indian tribes operating under a Federal Trust, may be devastating. Furthermore, he believes that the work of the Congress in their effort to improve the economic lot of Indians and to encourage them to govern themselves may be seriously impeded by such taxation by the States and their political subdivisions.

Questions Presented.

The sole question presented in this case is whether a California County can impose a possessory interest tax upon leases of land on an Indian reservation where the lands involved are still held in trust by the United States of America as Trustee for the sole use and benefit of the Indians.

ARGUMENT.

I.

The Application of the California Possessory Interest Tax to Lessees of Indian Land Still Held in Trust by the United States of America Violates the Constitution and Laws of the United States.

A. Article I, Section 8, Clause 3 of the Constitution Vests in the Federal Government an Exclusive Right to Regulate and Control Commerce With Indian Tribes.

The power of Congress to regulate commerce with Indian tribes has been described as "paramount and of a most sweeping character." *People ex rel. Ray v. Martin*, 294 N.Y. 61; 60 N.E. 2d 541 (1945); affirmed 326 U.S. 496 (1946). The broad scope of the power, expressed in Article I, Section 8, Clause 3 of the Constitution, stems from a recognized need in the early days of our nation to develope a uniform, nation-wide policy in the conduct of Indian affairs. As explained by this Court, in *United States v. 43 Gallons of Whiskey*, 93 U.S. 188 (1876), 194:

> "Under the Articles of Confederation of 1777, two limitations were placed upon the power of Congress of Indian affairs. The Indians must not be members of a State, nor must Congress do anything to violate or infringe the legislative right of the State within its own limits. Of necessity, these limitations rendered the power of no practical value. This was seen by the convention which framed the Constitution; Congress now has the exclusive and unfettered power to regulate commerce with Indian tribes, power as broad as that to regulate commerce with foreign nations. The only efficient way of dealing with the Indian tribes was to place them under the protection of the general Government."

Also see, *Dick v. United States,* 208 U.S. 340, 356 (1908); *Perrin v. United States,* 232 U.S. 478, 484 (1914).

On other occasions, the power of Congress to regulate commerce with Indian tribes has been said to be "not less than the power over commerce among the States." *Hanley v. Kansas City S. R. Company,* 187 U.S. 617, 619 (1903). Regardless of the characterization employed, this Court in each such case ruled that Article I, Section 8, Clause 3 vests an exclusive power in Congress to regulate commerce with Indian tribes and precludes regulation thereof by any State.

Commerce with Indian tribes means commerce with the individuals who compose those tribes. *United States v. Holliday,* 3 Wall. (U.S.) 407, 417 (1866); *United States v. Nice,* 241 U.S. 591 (1960). In the case at bar, the County, by imposing a possessory interest tax upon Lessees of Indian trust land, is clearly contravening the Indian commerce clause of the Federal Constitution: *Cohen, Federal Indian Law (Interior Department Revision, 1968) Pages 8 to 67, to 73; 57 Decision of the Department of Interior 124 (1940),* confirmed in *58 Decision Department of Interior 562 (1943).*

Certainly the intent of Congress in granting Indians the right to enter into long-term leases was to precipitate and accelerate economic development on Indian trust lands. At no time did the Congress intend to negate the economic advantages they had given Indians by virtue of their tax exemption with the passage of a long-term leasing law which would give them revenue from these same lands. In other words, this is an instance where "* * * the general rule that Statutes

passed for the benefit of dependent Indian tribes or communities are to be liberally construed, doubtful expression being resolved in favor of the Indians." *Alaska, Pacific Fisheries v. United States,* 248 U.S. 78, 89. To the same effect see *Seufert Bros. Company v. United States,* 249 U.S. 194; *Shoat v. Trapp,* 224 U.S. 665; *Jones v. Meehan,* 175 U.S. 1 and *Minnesota v. Hitchcock,* 185 U.S. 373, 402.

B. The Federal Government Has Pre-Empted the Field of Regulating Indian Commerce.

In accordance with Article I, Section 8, Clause 3 of the Constitution, Congress has exercised its authority to regulate commerce with Indian tribes. Specifically the *Act of July 9, 1832, 4 Stat. 564; 25 U.S.C. Sec. 2,* provides that:

> "The Commissioner of Indian Affairs shall, under the direction of the Secretary of the Interior, and agreeably to such regulations as the President may prescribe, have the management of *all* Indian affairs and of *all matters* arising out of Indian relations." (Emphasis ours).

Reading the above Statute, together with *25 U.S.C., Sec. 415,* plus the extensive leasing regulations set forth in *25 C.F.R.,* shows that there has been a comprehensive Congressional scheme to control the economic development precipitated by long-term leasing on Indian reservations. So total has been Federal occupation of Indian leasing that any State Legislation affecting such commerce with Indian tribes in Indian country, including the possessory interest tax imposed by the County of Riverside, is, therefore, *prima facie* invalid under the doctrine of pre-emption.

II.

The Imposition of the California Possessory Interest Tax Upon Lessees of Indian Trust Land Constitutes an Illegal Interference With Tribal Sovereignty.

Indian tribes were early recognized as distinct, independent political communities in which the laws of a State could have no force or effect, and into which its citizens had no right to intrude. *Worcester v. Georgia*, 6 Peter (U.S.) 515, 558-61 (1832). "Over the years this Court has modified these principles in cases where essential tribal relations were not involved and where the rights of Indians would not be jeopardized, but the basic policy of *Worcester has remained.*"

Williams v. Lees, 358 U.S. 217, 219 (1959).

The test of whether a State Statute may be enforced upon an Indian reservation is "whether the application of that law would interfere with reservation self-government." *Organized Village of Kake v. Egan*, 369 U.S. 60, 67-8, 75 (1962); *Williams v. Lees, supra*, at 220.

The power to levy taxes is an inherent attribute of tribal sovereignty, and, except as limited by treaty or act of Congress, properly may be exercised over non-Indians doing business within the exterior boundaries of Indian reservations. *Iron Crow v. Oglala Sioux Tribe*, 231 Fed. 2d 89, 98 (1956); *Buster v. Wright*, 135 Fed. 947 (1905), appeal dismissed 203 U.S. 599 (1906); *Morris v. Hitchcock*, 21 Appellate D.C. 565 (1903), affirmed 194 U.S. 384 (1904); *Federal Indian Law (Interior Department Revision)* (1958), pages 345-39; *55 Decisions of the Department of the Interior 14, 46-8*. The federal government has not exempted approved Lessees of Indian trust lands from tribal taxes. Indeed, far from restricting taxing power

of Indian tribes, the Congress during recent years has actually encouraged and assisted Indians to assume ever-increasing responsibilities of the management, conduct and support of their local government. *Williams v. Lee*; *supra*, at 222; *Iron Crow v. Oglala Sioux Tribe*, *supra*, at 99.

The possessory interest tax, as applied to Lessees of Indian trust land, necessarily conflicts with any tax that the tribe having jurisdiction over that area might wish to impose upon the same Lessee. If both taxes are assessed, the added cost of doing business either must be absorbed by the Lessee, or more than likely, will be shifted to the Indian Lessors, as so graphically evidenced by the uncontradicted record in the case at bar. In other words, the tax burden will shift to the Indian Lessor. If this is allowed to continue it will merely complicate the already herculean task confronting Congress in their efforts to encourage Indian tribes to assume further responsibilities for the management, conduct and support of their local tribal governments.

Conclusion.

On the basis of the foregoing, the conclusion is inescapable that the California Possessory Interest Tax, as applied to Lessees of Indian Trust lands is:

(1) A violation of Article I, Section 8, Clause 3 of the Constitution of the United States, and

(2) An illegal interference with the exercise by Indian tribes of inherent powers of local self-government.

Accordingly, the Honorable JAMES A. HALEY, as Amicus Curiae, respectfully requests that this Hon-

orable Court acknowledge the true and broad import of the legal question presented by the case at bar and, therefore, urges that the Indians' Petition for Certiorari be granted.

Respectfully submitted,

JAMES A. HALEY,
Member, United States Congress, Chairman of Indian Subcommittee, and Interior and Insular Affairs.
As Amicus Curiae.